

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743

**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 3, and Section 3251 of the General Industry Safety Orders

Refrigerator Vehicles

There are no modifications to the information contained in the Initial Statement of Reasons.

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

There were no written comments received.

II. Oral Comments

Oral comments received at the November 15, 2001, Public Hearing, San Diego, California.

Ms. Elizabeth Lee, Occupational Safety and Health Standards Board (OSHSB)) member.

Comment:

Board member Lee asked Board staff how refrigerated trucks that provide deliveries to hospitals and businesses would meet the requirements of the proposed regulation.

Response:

In accordance with the proposed exception refrigerated vehicles that make deliveries to mental, penal or correctional institutions could comply with Section 3251 at institutions where competent personnel are on duty (e.g., security personnel, correctional officers, medical personnel, orderlies, etc.) by simply making a brief visual "sweep" of the refrigerated compartment(s) to ensure there are no personnel inside before closing the compartment door(s). Such an administrative procedure would be integrated into the employer's illness and injury prevention program (General Industry Safety Order, Section 3203).

Mr. Jere Ingram, Board Chairman, Michael Manieri, OSHSB Principal Safety Engineer

Comment:

Chairman Ingram asked Mr. Manieri if a pinch bar is also called a pry bar to which Mr. Manieri responded that they are one in the same. Chairman Ingram then asked Mr. Manieri if Section 3251 requires every refrigerated truck or trailer in California to have a device as specified in the regulation that will enable an employee to extricate him/herself from the compartment in the event he/she is trapped inside to which Mr. Manieri responded that is correct. Chairman Ingram asked the Division representative what has been the citation history with regard to Section 3251 and wondered if the trucking industry is oblivious to the requirement. Chairman Ingram stated that he never seen any type of device as mandated by Section 3251 on a truck and wondered if the regulation is difficult to enforce since a number of trucks come into California from other states and there is no counterpart federal requirement to Section 3251. Chairman Ingram also asked the Division to check federal Department of Transportation regulations and suggested the regulation be reviewed at a future Public Hearing.

Response:

Telephone discussions with Mr. Mike Haugh, Director of Safety, California Trucking Association (CTA) indicate that large semi tractor-trailer trucks (“eighteen wheelers”) do not typically make deliveries to correctional or psychiatric institutions for security reasons. Delivery loads/orders are usually broken down in to smaller loads carried by smaller, van type trucks a portion of which may be equipped with refrigerated compartments. Mr. Haugh stated that the larger tractor-trailer vehicles are designed to simply refrigerate or chill the products carried not to maintain them in a frozen state. Consequently the risk of the doors freezing shut is remote.

Large refrigerated semi tractor-trailer trucks are typically designed with roll-up doors, interior pull latches or panic hardware which are intend to provide a reliable means of immediately opening the vehicles door’s in the event they should be accidentally closed while employees are inside the refrigerated compartment. Again as stated above such vehicles are not typically used to make deliveries at the institutions addressed by Section 3251. Section 3251 is intended to apply to vehicles with refrigerated compartments that make routine deliveries of perishables to the institutions specified in Section 3251 where the cargo is kept at low temperatures in a frozen state and where the door(s) could freeze shut from the inside.

According to Mr. Haugh employers who operate these types of refrigerated vehicles are well aware of the requirement contained in Section 3241 and compliance with the requirement as monitored by the CTA has been and continues to be good. Given this, Board staff believes it is reasonable to expect that citation history regard to Section 3251 is going to be insignificant.

Currently neither Federal OSHA nor the U.S. Department of Transportation regulations address refrigerator vehicles and the hazard of employee entrapment in a refrigerated compartment. However according to the CTA representative compliance with the existing requirement in Section 3251 has not historically been problematic for CTA members nor for truckers coming into California from other states. Since it is unlikely that large tractor-trailer rigs coming in from out of state would deliver refrigerated cargo directly to the institutions specified in Section 3251, for this reason Board staff believes enforcement of Section 3251 is not problematic. Regardless of whether there is a similar federal requirement or not, employers who conduct business in California from other states are subject to Title 8 regulations and can be cited by the Division for failure to do so (See OSHAB Docket No. 96-R1D3-3079, Decision After Reconsideration, HFS Investments, Inc.dba: Hadley Auto Transport, in non rulemaking file).

DETERMINATION OF MANDATE

This regulation does not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed regulation. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.